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this Memorandum Decision shall not be
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**IN THE
COURT OF APPEALS OF INDIANA**

JOHNNIE R. GOSHA,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 48A05-0610-CR-561
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0110-CF-506

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Johnnie Gosha appeals from the trial court's order revoking his probation. He presents the following issues for our review:

1. Whether the trial court erred when it did not make a determination of Gosha's indigency for purposes of this appeal.
2. Whether the trial court erred when it revoked Gosha's probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 2002, Gosha pleaded guilty to two counts of Dealing in Cocaine, as Class B felonies. The trial court accepted the plea and sentenced Gosha to an aggregate term of twenty years, with thirteen years suspended. The trial court ordered that upon his release, Gosha would serve ten years on probation.

On July 26, 2006, the State filed a notice of probation violation. During the evidentiary hearing on September 11, 2006, Gosha, represented by private counsel, admitted to four of the alleged probation violations. In particular, he admitted that he: failed to obtain a substance abuse evaluation and provide verification to the probation department; failed to pay child support in the amount of \$40 per week, per child; failed to abstain from illicit drugs; and failed to maintain employment and provide verification to the probation department. The trial court revoked his probation and ordered him to serve ten years of the suspended portion of his sentence. Gosha's counsel asked the trial court to appoint pauper appellate counsel, but the court denied that request. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Pauper Counsel

Gosha first contends that the trial court abused its discretion when it did not appoint him pauper counsel for purposes of this appeal. Indiana Rule of Criminal Procedure 11 provides in relevant part:

[F]ollowing a judgment revoking probation of a defendant found to have violated the terms of his probation after a contested felony probation revocation proceeding, the judge shall immediately advise the defendant as follows:

(1) that he is entitled to take an appeal or file a motion to correct error;

* * *

(4) that if he is financially unable to employ an attorney, the court will appoint counsel for defendant at public expense for the purpose of filing the motion to correct error and for taking an appeal.

* * *

The court shall then inquire of the defendant whether or not he is a pauper and has insufficient funds to employ an attorney. If the court finds that he is financially unable to employ counsel for an appeal and the defendant states that he desires an attorney for appeal, the court shall thereupon promptly appoint an attorney to represent the defendant in an appeal and notify the defendant at said time of said action.

Here, at the conclusion of the probation revocation hearing, Gosha's counsel inquired, "Judge, under these circumstances, is he entitled to a lawyer for an appeal?" Appellant's App. at 107-08. The trial court responded, "Not that I'm aware of, Mr. Long. Unless the law has changed since I last checked. Obviously, he's entitled to appeal[,] but not at public expense, if that's what you are asking." Id. at 108. The trial court did not comply with Criminal Rule 11.

However, on appeal, Gosha is represented by private counsel, and he asserts a substantive challenge to the merits underlying the revocation of his probation. Gosha has not demonstrated that he is indigent. He has merely pointed out that he was deemed indigent for purposes of his trial in 2001. But, again, Gosha hired private counsel to represent him at the probation revocation hearing. On this record, the trial court's error in not complying with Criminal Rule 11 is harmless. See, e.g., Korn v. State, 269 Ind. 181, 379 N.E.2d 444, 448 (1978) (holding harmless error where trial court did not inquire into defendant's indigency where defendant was not indigent).

Issue Two: Sufficiency of the Evidence

Gosha also contends that the State presented insufficient evidence to support the revocation of his probation. Probation is a matter of grace, and whether probation is granted is within the trial court's discretion. Morgan v. State, 691 N.E.2d 466, 468 (Ind. Ct. App. 1998). The sole question at a probation revocation hearing is whether the probationer should be allowed to remain conditionally free or rather should be required to serve the previously imposed sentence in prison. Id. It is well settled that violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). If the court finds the defendant has violated a condition of his probation at any time before the termination of the probationary period, and the petition to revoke is filed within the probationary period, then the court may order execution of the sentence that had been suspended. Wilburn v. State, 671 N.E.2d 143, 147 (Ind. Ct. App. 1996), trans. denied.

Here, Gosha admitted to four of the seven alleged probation violations, including failing to obtain a substance abuse evaluation, complying with treatment recommendations, and providing written verification of successful completion of a treatment program. Gosha admitted that he was abusing drugs at the time of the revocation hearing. This evidence was sufficient to support the revocation of Gosha's probation. See Wilson, 708 N.E.2d at 34. Gosha merely asks us to reweigh the evidence, which is a task not within our prerogative on appeal.

Affirmed.

RILEY, J., and BARNES, J., concur.